

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES DAVID TANNER,

Defendant-Appellee.

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UNPUBLISHED

June 29, 1999

No. 211126

Oakland Circuit Court

LC No. 97-153155 FH

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JOSEPH EDWARD HUBBELL,

Defendant-Appellee.

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No. 211242

Oakland Circuit Court

LC No. 97-153156 FH

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

In these consolidated cases, the prosecutor appeals as of right from the trial court's order dismissing the charges against defendants. We reverse and remand.

Defendants were both charged with the unlawful manufacture of marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). At a suppression hearing, Officer Hild testified that, as he was driving by the mobile home at issue, he noticed what appeared to be several marijuana plants in the window. At that time, he was approximately fifteen to twenty feet from the home. After Hild parked his patrol vehicle in front of the mobile home and called for backup, he observed a man enter the home. Shortly thereafter, Hild observed two men removing the marijuana plants from the window. At that point, he entered the mobile home with his weapon drawn. As he entered, he observed

defendant Tanner heading down a hallway with a marijuana plant. Hild ordered everyone to remain where they were and ordered defendants into the living room area.

When Hild's backup arrived, the officers attempted to obtain consent to search the mobile home. Although defendant Tanner gave the officers written permission to search the residence, defendant Hubbell, who occupied the bedroom where the plants were located, refused. As a result, the officers attempted to obtain a search warrant. While awaiting a decision concerning the warrant, two women entered the mobile home. The women told the officers that they resided at the mobile home and one of them told the officers that she shared a bedroom with defendant Hubbell. Both women gave the officers written consent to search the entire premises.

The trial court granted defendants' motions to suppress, rejecting the prosecutor's position that the warrantless entry was justified pursuant to the exigent circumstances exception to the warrant requirement. The trial court concluded that Hild's belief that the evidence was being destroyed was unreasonable under the circumstances. To support its ruling, the trial court noted that Hild was in the area responding to another call, and aside from what he observed in the window, there was no complaint or report that there was marijuana in the mobile home.

The prosecutor contends that the trial court erred in granting defendants' motions to suppress the marijuana found in the mobile home on the basis that no exigent circumstances existed to justify the police officer's warrantless entry. We agree.

We review a trial court's findings of fact at a suppression hearing for clear error. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). We defer to the trial court's resolution of factual issues, especially where they involve the credibility of witnesses. MCR 2.613(C); *People v Shaw*, 188 Mich App 520, 524-525; 470 NW2d 90 (1991). However, a trial court's ruling on a motion to suppress the evidence is reviewed de novo for all mixed questions of fact and law, and for all pure questions of law. *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998). The prosecutor does not challenge the trial court's factual findings, but rather, challenges the trial court's application of the facts to the constitutional standard. Therefore, in addressing the prosecutor's specific arguments on appeal, our review is de novo.

One of the exceptions to the warrant requirement is the exigent circumstances exception. *People v Cartwright*, 454 Mich 550, 558; 563 NW2d 208 (1997). Under this exception, officers may enter a home to secure the premises pending a warrant if the officers who enter the home have probable cause to believe that the premises contains contraband or evidence of a crime, and are able to show the existence of an actual emergency and articulate specific and objective facts which reveal a necessity for immediate action. *People v Blasius*, 435 Mich 573, 593-594; 459 NW2d 906 (1990); see also *Cartwright*, *supra* at 559; *People v Davis*, 442 Mich 1, 24; 497 NW2d 910 (1993) (discussing the elements of the exigent circumstances exception generally).

After a thorough review, we conclude that the trial court erroneously found that Hild lacked probable cause to believe that the premises contained contraband or evidence of a crime. Hild testified that, as he was driving by defendants' mobile home, he noticed several marijuana plants in the window from a distance of fifteen to twenty feet. Hild testified that, from his experience, the plants resembled marijuana plants because they "had the leaf form and structure of marijuana plants." Moreover his suspicions were confirmed when the residents began removing the plants from the windowsill once the officer's presence had been detected. Thus, the evidence and criminal activity occurring in the home (i.e., the manufacture of marijuana) were in plain view. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). Because the marijuana plants could be viewed by any passerby, the trial court erred in evaluating why the officer was in front of the house or requiring that there be some additional evidence to substantiate the officer's belief. The trial court should have limited its analysis to whether, based on his experience or knowledge, Hild could reasonably believe that the plants he saw were marijuana plants.

In addition, the trial court erred in focusing exclusively on whether Hild's belief that the marijuana plants were being "destroyed" was unreasonable. The analysis ignores the other constitutional justification for entry, i.e., whether there was probable cause that the evidence was being removed. Indeed, the Court in *Blasius* noted that, "the most objective and compelling justification [revealing a necessity for immediate action] would be an actual observation of *removal* or destruction of evidence." *Blasius, supra* at 594. (Emphasis added.) Here, there is nothing to dispute Hild's testimony that, as he was waiting for backup in his patrol vehicle parked in front of the residence, he saw a man enter the home and two men begin to remove the plants shortly thereafter. Under *Blasius*, this observation gave Hild constitutional justification to enter the home and secure the premises to prevent the "removal or destruction of evidence." *Id.* at 594.

Accordingly, we hold that Hild did not violate defendants' right to be protected against unreasonable search and seizure when he entered the mobile home to secure it and to prevent the removal of evidence. However, because the trial court did not make findings of fact necessary to determine whether the subsequent search was constitutionally valid under the consent<sup>1</sup> or other exception to the warrant requirement, we remand this case for a determination of the issue whether the search was constitutionally justified.

Reversed and remanded. We do not retain jurisdiction.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra

<sup>1</sup> The trial court did not make a factual finding as to whether the woman who indicated that she resided at the premises and shared the bedroom with defendant Hubbell had the authority to give consent or whether the consent was coerced.